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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FRED KUECK and JASEN SILVER,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

NESTLÉ PURINA PETCARE COMPANY,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs Fred Kueck and Jasen Silver (“Plaintiffs”) bring this action on behalf of
2 themselves, and all others similarly situated against Nestlé Purina PetCare Company (“Purina” or
3 “Defendant”). Plaintiffs make the following allegations pursuant to the investigation of their
4 counsel and based upon information and belief, except as to the allegations specifically pertaining
5 to themselves, which are based on personal knowledge.

6 **NATURE OF THE ACTION**

7 1. Plaintiffs bring this class action lawsuit on behalf of themselves and similarly
8 situated consumers (“Class Members”) who purchased Purina-branded pet food¹ (the “Products”).
9 The Products are labeled as healthy, yet the packaging contains per- and polyfluoroalkyl substances
10 (“PFAS”). PFAS are synthetic chemicals that pose undue health risks, even at low levels.
11 Accordingly, the presence of PFAS renders Defendant’s healthy representations false and
12 misleading.

13 2. Laboratory studies have shown that PFAS exposure raises a host of health effects,
14 such as various cancers, liver damage, and immunotoxicity effects. Because of the concerns
15 presented by PFAS, consumers—like Plaintiffs—care about their presence, even if in small
16 amounts.

17 3. Defendant nonetheless consistently makes various misrepresentations concerning
18 the Products to convince consumers that the Products are healthy for consumption and do not
19 expose pets to heightened health risks. Defendant knew, or should have known, that PFAS are
20 unhealthy and raise health risks because “the dangers of PFAS are well known” to the point where
21 “public demand is leading to a growing market for PFAS-free products.”²

22 4. Moreover, Defendant fails to inform consumers that the Products contain PFAS and
23 implications of consuming PFAS. The inadequate labeling means that consumers who purchase
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25 ¹ Those products include, but are not limited to, all varieties of Cat Chow: Cat Chow Complete
26 Chicken, Cat Chow Complete Salmon, Cat Chow Gentle, Cat Chow Senior, Cat Chow Indoor, Cat
27 Chow Naturals Indoor, Cat Chow Naturals Original, Kitten Chow Nurture, Kitten Chow Naturals.

28 ² Jeffrey Kluger, *Companies Knew the Dangers of PFAS 'Forever Chemicals'—and Kept Them Secret*, TIME (June 1, 2023), <https://time.com/6284266/pfas-forever-chemicals-manufacturers-kept-secret/>.

1 Defendant's Products are unaware that their pets are at heightened risk of an array of health effects
2 from PFAS.

3 5. Based on Defendant's omission, a reasonable consumer would expect that the
4 Products are healthy and can be purchased and consumed as marketed and sold. Yet, Defendant
5 does not notify consumers, like Plaintiffs, that the Products are not healthy, pose health risks, and
6 should otherwise be approached with caution.

7 6. Accordingly, Plaintiffs bring their claims against Defendant individually and on
8 behalf of a class of all others similarly situated for (1) violation of California's Unfair Competition
9 Law, Cal. Bus. & Prof. Code § 17200, *et seq.*; (2) violation of the Consumers Legal Remedies Act,
10 Cal. Civ. Code § 1750, *et seq.*; (3) violation of California's False Advertising Law, Cal. Bus. &
11 Prof. Code § 17500, *et seq.*; (4) Fraud; (5) Fraudulent Omission or Concealment; and (6) Unjust
12 Enrichment.

13 **PARTIES**

14 7. Plaintiff Fred Kueck is a natural person and citizen of California who resides in Bay
15 Point, California. Mr. Kueck has long been interested in providing his pets with healthy food that
16 would not expose his pets to harmful chemicals or other substances. Mr. Kueck specifically set out
17 to purchase products with those characteristics. Mr. Kueck did so because he cares about the
18 presence of harmful substances even if in small amounts.

19 8. Due to Mr. Kueck's interest in doing so, Mr. Kueck purchased Purina Cat Chow
20 Complete Chicken several times, including from Walmart in Pittsburg, California as well as
21 PetSmart in Concord, California. Mr. Kueck's most recent purchase was in approximately
22 September 2023. Prior to his purchase, Mr. Kueck reviewed the labeling, packaging, and
23 marketing materials of the products and saw the false and misleading claims that, among other
24 things, the Products are healthy for animal consumption.

25 9. Mr. Kueck understood these claims to be representations and warranties by
26 Defendant, that the Products are free from harmful ingredients and would indeed support—not
27 detract from—the health of his pets. Mr. Kueck reasonably relied on these representations and
28 warranties in deciding to purchase the Products, and these representations were part of the basis of

1 the bargain in that he would not have purchased the Products or would not have purchased them on
2 the same terms, if the true facts about their contents had been known. As a direct result of
3 Defendant's material misrepresentations and omissions, Mr. Kueck suffered, and continues to
4 suffer, economic injuries.

5 10. Plaintiff Jasen Silver is a natural person and citizen of California who resides in San
6 Jose, California. Mr. Silver has long been interested in providing his pets with healthy food that
7 would not expose his pets to harmful chemicals or other substances. Mr. Silver specifically set out
8 to purchase products with those characteristics. Mr. Silver did so because he cares about the
9 presence of harmful substances even if in small amounts.

10 11. Due to Mr. Silver's interest in doing so, Mr. Silver has purchased Purina Cat Chow
11 Complete Chicken several times, most recently from Safeway in San Jose, California in September
12 2023. Prior to his purchase, Mr. Silver reviewed the labeling, packaging, and marketing materials
13 of the products and saw the false and misleading claims that, among other things, the Products are
14 healthy for animal consumption.

15 12. Mr. Silver understood these claims to be representations and warranties by
16 Defendant, that the Products are free from harmful ingredients and would indeed support—not
17 detract from—the health of his pets. Mr. Silver reasonably relied on these representations and
18 warranties in deciding to purchase the Products, and these representations were part of the basis of
19 the bargain in that he would not have purchased the Products or would not have purchased them on
20 the same terms, if the true facts about their contents had been known. As a direct result of
21 Defendant's material misrepresentations and omissions, Mr. Silver suffered, and continues to
22 suffer, economic injuries.

23 13. Plaintiffs remain interested in purchasing pet food made by Defendant that is
24 healthy for their pets and safe for consumption. However, Plaintiffs are unable to determine if the
25 Products are actually healthy for consumption. Plaintiffs understand that the composition of the
26 Products may change over time. But so long as Defendant may market the Products as healthy for
27 consumption when the Products are not healthy and pose health risks, then when presented with
28 false or misleading information when shopping, they will be unable to make informed decisions

1 about whether to purchase Defendant’s Products and will be unable to evaluate the different prices
2 between Defendant’s Products and competitor’s products. Plaintiffs are further likely to be
3 repeatedly misled by Defendant’s conduct, unless and until Defendant is compelled to ensure that
4 Products marketed and labeled as healthy for consumption, are, in fact, healthy for consumption.

5 14. Defendant, Purina, is a Missouri corporation with headquarters in Saint Louis,
6 Missouri. Defendant advertises, markets, manufactures, distributes, and sells the Products
7 throughout the United States, including in the State of California. Defendant manufactured,
8 marketed, and sold the Products during the Class Period.

9 **JURISDICTION AND VENUE**

10 15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A), as
11 amended by the Class Action Fairness Act of 2005 (“CAFA”), because this case is a class action
12 where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00,
13 exclusive of interest and costs, there are over 100 members of the putative class, and Plaintiffs, as
14 well as most members of the proposed class, are citizens of a different state than Defendant. This
15 Court also has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

16 16. This Court has personal jurisdiction over Defendant because Defendant
17 purposefully availed itself of this forum by conducting substantial business within California such
18 that Defendant has significant, continuous, and pervasive contacts with the State of California.

19 17. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant
20 does substantial business in this District, a substantial part of the events giving rise to Plaintiffs’
21 claims took place within this District, and Plaintiffs were subject to Defendant’s advertisements in
22 this District.

23 **FACTUAL ALLEGATIONS**

24 **A. The Presence Of PFAS Renders Healthy Representations Misleading**

25 18. The Environmental Working Group (“EWG”) commissioned an independent
26 laboratory to test the packaging for various pet food products, including Defendant’s Cat Chow
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1 Complete Chicken Product.³ The total fluorine test—an industry standard to determine the
 2 presence of PFAS—found that Defendant’s packaging⁴ contains levels of organic fluorine
 3 indicative of PFAS as well as various named PFAS.⁵

4 19. Specifically, EWG’s laboratory results showed that the packaging contained a total
 5 fluorine count of 310 parts per million (“ppm”) and named PFAS in the amount of 244.7 parts per
 6 billion (“ppb”), which was the “**highest concentration of total PFAS**”⁶ out of all products tested.⁷

7 20. Indeed, no other pet food bag had more than 15 ppb of total PFAS, whereas
 8 Defendant’s Cat Chow Complete Chicken Product had 244.7 ppb of total PFAS,⁸ an amount that
 9 the EWG termed “alarming.”⁹

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 12 ³ Sydney Evans & Anthony Lacey, *Quibble with Kibbles: ‘Forever chemicals’ in pet food*
 13 *packaging add to perils at home*, EWG (Nov. 3, 2022), [https://www.ewg.org/news-](https://www.ewg.org/news-insights/news/2022/11/quibble-kibbles-forever-chemicals-pet-food-packaging-add-perils-home)
 14 [insights/news/2022/11/quibble-kibbles-forever-chemicals-pet-food-packaging-add-perils-home](https://www.ewg.org/news-insights/news/2022/11/quibble-kibbles-forever-chemicals-pet-food-packaging-add-perils-home)
 15 (emphasis added). Defendant has not substantially or meaningfully altered the components
 16 comprising the Products’ packaging within the past several years. Because the packaging for the
 17 Products is still comprised of similar and unaltered components, and some have tested for PFAS, it
 18 is highly likely that the packaging of all of Defendant’s Products are comprised of certain named
 19 PFAS.

20 ⁴ Defendant has not substantially or meaningfully altered the components comprising the Products’
 21 packaging within the past several years. Because the packaging for the Products is still comprised
 22 of similar and unaltered components, and some have tested for PFAS, it is highly likely that the
 23 packaging of all of the Defendant’s Products at issue are comprised of certain named PFAS.

24 ⁵ *Supra* note 3; *Short Guide to Common Testing Methods for Per and Polyfluoroalkyl Substances*
 25 *(PFAS)*, BIZNGO (2020), [https://www.bizngo.org/images/ee_images/uploads/resources/](https://www.bizngo.org/images/ee_images/uploads/resources/CFE_PFAS_Testing_FactSheet_Final.pdf)
 26 [CFE_PFAS_Testing_FactSheet_Final.pdf](https://www.bizngo.org/images/ee_images/uploads/resources/CFE_PFAS_Testing_FactSheet_Final.pdf) (stating that, “[t]otal fluorine techniques measure either
 27 total organic fluorine or total fluorine. These techniques are efficient ways to identify whether
 28 PFAS are likely present”); Kevin Loria, *Dangerous PFAS Chemicals Are in Your Food Packaging*,
 CONSUMER REPORTS (Mar. 24, 2023), [https://www.consumerreports.org/health/food-](https://www.consumerreports.org/health/food-contaminants/dangerous-pfas-chemicals-are-in-your-food-packaging-a3786252074/)
[contaminants/dangerous-pfas-chemicals-are-in-your-food-packaging-a3786252074/](https://www.consumerreports.org/health/food-contaminants/dangerous-pfas-chemicals-are-in-your-food-packaging-a3786252074/) (detailing that
 they “tested products for their total organic fluorine content, which is considered the simplest way
 to assess a material’s total PFAS content”).

⁶ *Supra* note 3.

⁷ *Id.*; Arabela Ramírez Carnero, Antía Lestido-Cardama, Patricia Vazquez Loureiro, Letricia
 Barbosa-Pereira & Ana Rodríguez Bernaldo de Quirós, Raquel Sendón, *Presence of Perfluoroalkyl*
and Polyfluoroalkyl Substances (PFAS) in Food Contact Materials (FCM) and Its Migration to
Food, 10 FOODS 1, 5 (2023) <https://doi.org/10.3390/foods10071443>.

⁸ *Supra* note 3.

⁹ Monica Amarelo, *New tests find toxic “forever chemicals” in pet food bags and baby textiles*,
 EWG (Nov. 3, 2022), [https://www.ewg.org/news-insights/news-release/2022/11/new-tests-find-](https://www.ewg.org/news-insights/news-release/2022/11/new-tests-find-toxic-forever-chemicals-pet-food-bags-and-baby)
[toxic-forever-chemicals-pet-food-bags-and-baby](https://www.ewg.org/news-insights/news-release/2022/11/new-tests-find-toxic-forever-chemicals-pet-food-bags-and-baby).

1 21. Just as troubling, the test results showed that Defendant’s Cat Chow Complete
2 Chicken Product **“was contaminated with six different PFAS[.]”**¹⁰

3 22. The amount of fluorine — 310 ppm — found in the Product’s packaging further
4 supports that Defendant knew or should have known about the presence of PFAS in its’ Products.
5 Although “trace amounts of fluorine naturally occur in the environment, high levels prove that a
6 product was intentionally manufactured using PFAS.”¹¹ Rainier Lohmann, Director of the
7 University of Rhode Island’s Lohmann Lab has explained that “[i]f a product is showing really
8 high fluorine levels, companies really can’t claim they didn’t use PFAS.”¹²

9 23. Recent legislation¹³ has been in line with the above findings. New York,
10 Washington, Vermont, Connecticut, Colorado, Maryland, Minnesota, Rhode Island, and Hawaii
11 have banned the intentional use of PFAS in food packaging. California not only banned the
12 intentional use of PFAS in food packaging, but also banned food packaging that exceeds 100 ppm
13 total organic fluorine.¹⁴

14 24. These legislation enactments make sense as researchers have also established that
15 PFAS are mobile and readily migrate from food contact articles (“materials intended to come into
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18 ¹⁰ *Id.* (emphasis added).

19 ¹¹ Joe Fassler, *The bowls at Chipotle and Sweetgreen are supposed to be compostable. They*
20 *contain cancer-linked “forever chemicals,”* THE COUNTER (Aug. 5, 2019),
21 [https://thecounter.org/pfas-forever-chemicals-sweetgreen-chipotle-compostable-biodegradable-](https://thecounter.org/pfas-forever-chemicals-sweetgreen-chipotle-compostable-biodegradable-bowls/)
22 [bowls/](https://thecounter.org/pfas-forever-chemicals-sweetgreen-chipotle-compostable-biodegradable-bowls/).

23 ¹² *Id.*; See also BPI, *Fluorinated Chemicals*, <https://bpiworld.org/fluorinated-chemicals> (last visited
24 Oct. 24, 2023) (stating that the BPI Certification Scheme requires that BPI Certified items not
25 contain more than 100ppm of total organic fluorine); Loria, *supra* note 5 (noting that starting
26 January 2023, California has banned intentional addition of PFAS and that paper food packaging
27 must have less than 100 ppm of organic fluorine).

28 ¹³ Similarly, the U.S. Environmental Protection Agency (“EPA”) has found that PFAS can cause
harm at levels “much lower than previously understood” and that almost no level of exposure is
safe. Lisa Freidan, *Biden Administration to Restrict Cancer Causing ‘Forever Chemicals,’* NYT
(June 22, 2023), <https://www.nytimes.com/2023/03/14/climate/epa-water-pfas-chemicals.html>.
The EPA advises that drinking water should contain no more than 4 parts per trillion of PFAS;
whereas, previously, the EPA advised drinking water contain no more than 70 parts per trillion.

¹⁴ Loria, *supra* note 5 (noting that starting January 2023, California has banned intentional addition
of PFAS and that paper food packaging must have less than 100 ppm of organic fluorine).

1 contact with food during its transport, storage, conservation, handling or manufacture”) onto
2 food.¹⁵

3 25. PFAS migrating onto food is paramount because of the health risks raised by
4 PFAS.¹⁶

5 26. Indeed, PFAS are “resistant to environmental and metabolic degradation” which
6 leads to “build up” in the bodies of those exposed to PFAS.¹⁷ As a result, “[e]xposure to certain
7 PFAS may lead to detrimental health impacts including reproductive effects, developmental
8 effects, increased risks of cancers, weakening of the immune system, and endocrine system
9 disruption.”¹⁸

10 27. Critical to the present facts, animal studies have found that PFAS can cause, among
11 other serious health effects, cancer, physical development delays, endocrine system disruption,
12 liver and pancreatic tumors, thyroid disease, kidney disease, and reproductive disease.¹⁹

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14 ¹⁵ Loria, *supra* note 5; Alan Ducatman, Jonas LaPier, Rebecca Fuoco & Jamie C. DeWitt, *Official*
15 *health communications are failing PFAS-contaminated communities*, ENV’T. HEALTH (2022), doi:
16 10.1186/s12940-022-00857-9 (stating that “[b]ecause of widespread use, as well as their mobility
and persistence, most humans have detectable internal PFAS contamination from multiple sources,
notably food [and] food contact materials”).

17 ¹⁶ See *Time for Action to End PFAS Threat*, UNION OF CONCERNED SCIENTISTS (June 13, 2019),
18 <https://www.ucsusa.org/resources/pfas-threat#:~:text=in%20their%20water,-,PFAS%20health%20impacts,%2Dinduced%20hypertension%2Fpre%2Ddeclampsia> (calling for the
19 EPA “act now to protect communities from a highly toxic class of chemicals known as PFAS,” and
describing PFAS as being “associated with many serious illnesses, including cancers and
reproductive disorders”).

20 ¹⁷ *Research for Understanding PFAS Uptake and Bioaccumulation in Plant and Animals in*
21 *Agricultural, Rural, and Tribal Communities Request for Applications (RFA)*, EPA (2023) 1, 2,
22 [https://www.epa.gov/system/files/documents/2023-10/fy23-star-epa-usda-pfas-rfa-october-2023-](https://www.epa.gov/system/files/documents/2023-10/fy23-star-epa-usda-pfas-rfa-october-2023-final.pdf)
23 [final.pdf](https://www.epa.gov/system/files/documents/2023-10/fy23-star-epa-usda-pfas-rfa-october-2023-final.pdf); Phillip C. Bost, Mark J. Strynar, Jessica L. Reiner, Jerry A. Zweigenbaum, Patricia L.
Secoura, Andrew B. Lindstrom & Janice A. Dye, *U.S. domestic cats as sentinels for perfluoroalkyl*
24 *substances: Possible linkages with housing, obesity, and disease*, 151 ENV’T. RSCH. (2016) 145,
25 <https://doi.org/10.1016/j.envres.2016.07.027> (stating that PFAS are “resistant to biodegradation
processes”).

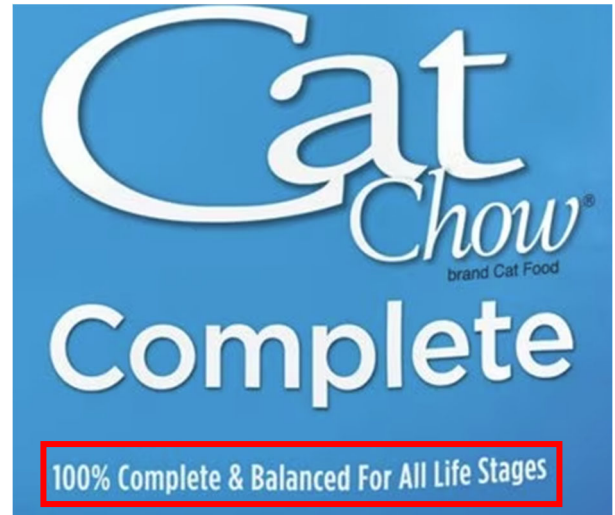
26 ¹⁸ EPA, *supra* note 17.

27 ¹⁹ Kellyn S. Betts, *Perfluoroalkyl Acids: What is the Evidence Telling Us?*, ENV’T. HEALTH
28 PERSPECTIVES (2007), A250, <https://doi.org/10.1289/ehp.115-a250>; Michigan PFAS Response
Team, *PFAS and Pets and Livestock Health*, STATE OF MICH.,
<https://www.michigan.gov/pfasresponse/faq/categories/pfas-and-pets-and-livestock-health>; Heather
D.Brake, Antonia Langfeldt, John B. Kaneene & Melinda J. Wilkins, *Current per- and*
polyfluoroalkyl substance (PFAS) research points to a growing threat in animals, 261 J. AM.
VETERINARY MED. ASS’N. (2023) 952, 955, <https://doi.org/10.2460/javma.22.12.0582>.

B. Defendant’s Misrepresentations And Omissions Are Actionable

28. Defendant has endangered consumers’ pets by exposing them to PFAS, which Defendant knows, or should have known, carries significant health concerns. Even though the Products’ packaging contains the harmful ingredient, Defendant represents that the Products are healthy for animals.

29. For example, the Cat Chow Complete Chicken Product has various representations that indicate the Product is healthy for cats. Notably, the front of the bag explicitly states that the Product is “100% complete & balanced for all life stages” and contains the “cornerstones of nutrition”: such as “all 25 essential vitamins & minerals,” “omega-6 fatty acids for shiny coat,” “healthy carbs for vital energy,” and “high-quality protein for strong muscles”:



1 30. Defendant further represents that the Cat Chow Complete Chicken Product is
2 “formulated to help cats live a long, healthy life” and “helps support a healthy immune system”:



17 **Formulated to help cats live a long, healthy life** **Made with real, farm-raised chicken** **Helps support a healthy immune system**

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19 31. Defendant makes these healthy representations on all of its Cat Chow Products.²⁰
20 For example, each Product’s bag represents that the food is “100% Complete & Balanced.” Some
21 Products’ bags include the “all 25 essential vitamins & minerals” representations. Others include
22 representations regarding the inclusion of “Omega-6 Fatty Acids” to “Nourish Skin and Coat”:

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28 ²⁰ *Supra* note 1.

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16 32. Defendant’s Purina Cat Chow Naturals Products similarly make healthy
17 representations. For example, all of Purina Cat Chow Naturals Products make additional healthy
18 representations such as, “with added vitamins, minerals & nutrients,” “0% Fillers,”²¹ and “No
19 Artificial Colors, Flavors, or Preservatives.”

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²¹ Ken Tudor, *What You Need to Know About Fillers in Dog Food*, HEARTHSTONE HOMEMADE, <https://www.hearthstonehomemadedogfood.com/blog/what-you-need-to-know-about-fillers-in-dog-food> (defining fillers in dog food as “an ingredient that adds bulk to a diet without adding any nutritional value”) (last visited Oct. 25, 2023).

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1 33. Moreover, Defendant publicly promises consumers “quality in [its] production
2 processes” and states it follows through with that promise by “comply[ing] and exceed[ing] all
3 national regulations.”²² Defendant employs a “four-fold strategy to ensure that its products are safe
4 for animals, people, and the environment.”²³ Its “prevention-based approach is designed to manage
5 regulatory compliance and anticipate public concerns with current and future products and
6 operations.”²⁴

7 34. Additionally, Defendant states that it conducts “more than 100,000 quality and
8 safety checks daily across its entire footprint, integrated into each step of the process.”²⁵ Out of
9 those 100,000 plus checks, more than “4,600 quality checks” are conducted “during packaging.”²⁶

10 35. Defendant operates microbiology and chemistry labs where a “team of four
11 employees” does a daily review of “the results from all quality and safety tests ... before product is
12 released for distribution.”²⁷ Thus, Defendant knew, or should have known, the Products contain
13 PFAS, the health impact PFAS poses for animals, and how the negative impact of PFAS makes the
14 healthy claims false.

15 36. In summary, Plaintiffs saw Defendant’s representations and appreciated that these
16 representations meant that the Products were healthy for their cats. Plaintiffs would not have
17 purchased these Products absent their desire to provide healthy nutrition for their cats. Defendant
18 misrepresents that these Products are healthy and omits the fact that the Products contain PFAS—
19 an unhealthy and synthetic chemical, that has been found to pose health risks to animals. As a
20 result, Plaintiffs and the Class were injured by the full purchase price of the Products because the
21 Products are worthless, as they are marketed as healthy for animal consumption when they are not.

22 ²² PURINA, <https://purina.com.jm/purina/know-purina/quality> (last visited Oct. 16, 2023).

23 ²³ U.S. Department of Commerce, *Nestlé Purina PetCare Company: Malcolm Baldrige National
24 Quality Award 2010 Award Recipient*, MANUFACTURING NAT’L INST. STANDARDS TECH.,
<https://www.nist.gov/baldrige/nestle-purina-petcare-company> (last visited Nov. 2, 2023).

25 ²⁴ *Id.*

26 ²⁵ Jennifer Semple, *Pet Food Processing goes ‘Behind the Bowl’ at Purina production plant*, PET
27 FOOD PROCESSING (Mar. 6, 2019) [https://www.petfoodprocessing.net/articles/12967-pet-food-
28 processing-goes-behind-the-bowl-at-purina-production-plant](https://www.petfoodprocessing.net/articles/12967-pet-food-processing-goes-behind-the-bowl-at-purina-production-plant).

²⁶ *Id.*

²⁷ *Id.*

1 In the alternative, Plaintiffs and the Class were injured by the premium in price they paid for the
2 Products as a result of the Products being advertised and represented as healthy, when they were
3 not due to the presence of PFAS.

4 37. Plaintiffs and Class Members bargained for products that are healthy for
5 consumption and were deprived of the basis of their bargain when Defendant sold them Products in
6 packaging containing PFAS, heightening the risks of serious negative health effects. No
7 reasonable consumer would expect that the Products marketed as containing the “cornerstones of
8 nutrition” such as “all 25 essential vitamins & minerals,” “omega-6 fatty acids for shiny coat,”
9 “healthy carbs for vital energy,” and “high-quality protein for strong muscles” as well as being
10 “formulated to help cats live a long, healthy life” would pose a risk to their pets’ health, safety, and
11 well-being.

12 38. Nor would a reasonable consumer expect the Products, represented as healthy, to
13 contain PFAS, which are linked to harmful health effects in animals—such as cancer, physical
14 development delays, endocrine disruption, liver and pancreatic tumors, thyroid disease, kidney
15 disease, and reproductive disease.²⁸ Accordingly, Plaintiffs and Class Members suffered economic
16 injuries as a result of purchasing the Products.

17 39. Moreover, because these facts relate to a critical safety-related deficiency in the
18 Products, Defendant was under a continuous duty to disclose to Plaintiffs and Class Members the
19 true standard, quality, and grade of the Products and to disclose that the Products contained, or
20 risked containing, substances known to have adverse health effects. Defendant also had a duty to
21 disclose because of its exclusive and/or superior knowledge concerning the true nature of the
22 Products. Nonetheless, Defendant concealed and misrepresented this information, as discussed
23 herein.

24 40. Although Defendant is in the best position to know what content it placed on its
25 packaging during the relevant timeframe, and the knowledge that Defendant had regarding the
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28 ²⁸ *Supra* note 16.

1 presence of PFAS that rendered its representations misleading, to the extent necessary, Plaintiffs
2 satisfy the requirements of Rule 9(b) by alleging the following facts with particularity:

3 41. **WHO:** Defendant made material misrepresentations and omissions of fact about
4 the Products through its labeling which shows that the Products are healthy. These representations
5 constitute omitted material information regarding harmful chemicals (PFAS).

6 42. **WHAT:** Defendant's conduct here was, and continues to be, fraudulent because it
7 omitted and concealed that the Products contain PFAS—which are widely known to have
8 significant health repercussions. Thus, Defendant's conduct deceived Plaintiffs and Class
9 Members into believing that the Products are healthy for animal consumption when they are not.
10 Defendant knew or should have known that this information is material to reasonable consumers,
11 including Plaintiffs and Class Members in making their purchasing decisions, yet it continued to
12 pervasively market the Products in this manner in the U.S. market to convince consumers the
13 Products are healthy for pets.

14 43. **WHEN:** Defendant made material misrepresentations and omissions during the
15 putative class periods, including prior to and at the time Plaintiffs and Class Members purchased
16 the Products, despite its knowledge that the Products contained PFAS, harmful substances with
17 known adverse health effects.

18 44. **WHERE:** Defendant's marketing messages were uniform and pervasive, carried
19 through material misrepresentations and omissions on the labeling of the Products' packaging,
20 website, and through marketing materials.

21 45. **HOW:** Defendant made material misrepresentations and omissions of fact
22 regarding the Products, including the presence of PFAS in the Products.

23 46. **INJURY:** Plaintiffs and Class Members purchased, paid a premium (up to the full-
24 price), or otherwise paid more for the Products when they otherwise would not have absent
25 Defendant's misrepresentations and omissions.

26 **CLASS ALLEGATIONS**

27 47. ***Class Definition.*** Plaintiffs bring this action on behalf of a class of similarly
28 situated individuals, defined as all persons in the United States who purchased the Products during

1 the applicable statute of limitations period (the “Class”). Excluded from the Class are persons who
2 made such purchase for purpose of resale, Defendant and any entities in which Defendant has a
3 controlling interest, Defendant’s agents and employees, the judge to whom this action is assigned,
4 and members of the judge’s staff, and the judge’s immediate family.

5 48. Plaintiffs also seek to represent a subclass consisting of Class members who
6 purchased the Products in California during the applicable statute of limitations period (the
7 “California Subclass” or “Subclass”).

8 49. Plaintiffs reserve the right to amend the definition of the Class and Subclass if
9 discovery or further investigation reveals that the Class or Subclass should be expanded or
10 otherwise modified.

11 50. **Numerosity.** Members of the Class and Subclass are so numerous that their
12 individual joinder herein is impracticable. On information and belief, members of the Class and
13 Subclass number in the hundreds of thousands. The precise number of Class and Subclass
14 Members and their identities are unknown to Plaintiffs at this time but may be determined through
15 discovery. Class and Subclass Members may be notified of the pendency of this action by mail
16 and/or publications through the distribution records of Defendant and third-party retailers and
17 vendors.

18 51. **Commonality and Predominance.** Common questions of law and fact exist as to all
19 Class and Subclass Members and predominate over questions affecting only individual Class
20 Members. Common legal and factual questions include but are not limited to: (1) whether
21 Defendant warranted the Products as safe for animal consumption; (2) whether Defendant
22 warranted the Products as healthy for animals; (3) whether Defendant breached these warranties;
23 and (4) whether Defendant committed the statutory and common law violations alleged against it
24 herein by doing so; and (5) whether the Products contain PFAS.

25 52. **Typicality.** Plaintiffs’ claims are typical of the claims of the Class and Subclass
26 in that Plaintiffs purchased Defendant’s Products in reliance on the presentations and warranties
27 described above and suffered a loss as a result of that purchase.

1 53. *Adequacy.* Plaintiffs are adequate representatives of the Class and Subclass
2 because their interests do not conflict with the interests of the Class or Subclass Members they seek
3 to represent, they have retained competent counsel experienced in prosecuting class actions, and
4 they intend to prosecute this action vigorously. The interests of the Class and Subclass Members
5 will be fairly and adequately protected by Plaintiffs and their counsel.

6 54. *Superiority.* The class mechanism is superior to other available means for the fair
7 and efficient adjudication of the claims of Class and Subclass Members. Individually, Class and
8 Subclass Members may lack the resources to undergo the burden and expense of individual
9 prosecution of the complex and extensive litigation necessary to establish Defendant's liability.
10 Individualized litigation increases the delay and expense of all parties and multiplies the burden on
11 the judicial system presented by the complex legal and factual issues of the case. Individualized
12 litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class
13 action device presents far fewer management difficulties and provides the benefits of single
14 adjudication, economy of scale, and comprehensive supervision by a single court on the issue of
15 Defendant's liability. Class treatment of the liability issue will ensure that all claims and claimants
16 are before this Court for consistent adjudication of liability issues.

17 55. Defendant has acted or failed to act on grounds generally applicable to the Class,
18 thereby making appropriate final injunctive relief with respect to the Class and Subclass as a
19 whole.

20 56. Without a class action, Defendant will continue a course of action that will result in
21 further damages to Plaintiffs and members of the Class and will likely retain the benefits of its
22 wrongdoing.

23 57. Based on the foregoing allegations, Plaintiffs' claims for relief include those set
24 forth below.

25 **COUNT I**
26 **Violation of California's Unfair Competition Law,**
27 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***
28 **(On Behalf Of The California Subclass)**

58. Plaintiffs reallege and reincorporate by reference all paragraphs alleged above.

1 59. Plaintiffs bring this claim individually and on behalf of the Subclass against
2 Defendant.

3 60. California Business and Professions Code § 17200 prohibits “any unlawful, unfair,
4 or fraudulent business act or practice.” For the reasons discussed above, Defendant has engaged in
5 unlawful, unfair, and fraudulent business acts or practices in violation of California Business &
6 Professions Code § 17200.

7 61. By committing the acts and practices alleged herein, Defendant has violated
8 California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200-17210 by
9 engaging in unlawful, fraudulent, and unfair conduct.

10 62. Defendant has violated the UCL’s proscription against engaging in **Unlawful**
11 **Business Practices** as a result of its violations of the CLRA, Cal. Civ. Code § 1770(a)(5), (a)(7),
12 and (a)(9) as alleged below, violations of California’s False Advertising Law, in addition to
13 violations of common law.

14 63. As more fully described above, Defendant’s misleading marketing, advertising,
15 packaging, and labeling of the Products are likely to deceive reasonable consumers. In addition,
16 Defendant has committed unlawful business practices by, inter alia, making the representations and
17 omissions of material facts, as set forth more fully herein, and violating the common law.

18 64. Plaintiffs and the Class Members reserve the right to allege other violations of law
19 which constitute other unlawful business acts or practices.

20 65. Defendant has also violated the UCL’s proscription against engaging in **Unfair**
21 **Business Practices**. Defendant’s acts, omissions, misrepresentations, practices and non-
22 disclosures as alleged herein also constitute “unfair” business acts and practices within the meaning
23 of Business & Professions Code § 17200 *et seq.* in that its conduct is substantially injurious to
24 consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the
25 gravity of the conduct outweighs any alleged benefits attributable to such conduct.

26 66. There were reasonably available alternatives to further Defendant’s legitimate
27 business interests, other than the conduct described herein as noted above.

1 67. Defendant has further violated the UCL’s proscription against engaging in
2 **Fraudulent Business Practices**. Defendant’s claims, nondisclosures, and misleading statements
3 with respect to the Products, as more fully set forth above, were false, misleading, and/or likely to
4 deceive the consuming public within the meaning of Business & Professions Code § 17200.

5 68. Plaintiffs and the other Subclass Members suffered a substantial injury by virtue of
6 buying the Products that they would not have purchased absent Defendant’s unlawful, fraudulent,
7 and unfair marketing, advertising, packaging, and omission about the defective nature of the
8 Products.

9 69. There is no benefit to consumers or competition from deceptively marketing and
10 omitting material facts about the true nature of the Products.

11 70. Plaintiffs and the other Subclass Members had no way of reasonably knowing that
12 the Products they purchased were not as marketed, advertised, packaged, or labeled. Thus, they
13 could not have reasonably avoided the injury each of them suffered.

14 71. The gravity of the consequences of Defendant’s conduct as described outweighs any
15 justification, motive, or reason therefore, particularly considering the available legal alternatives
16 which exist in the marketplace, and such conduct is immoral, unethical, unscrupulous, offends
17 established public policy, or is substantially injurious to Plaintiffs and the other Subclass Members.

18 72. Pursuant to California Business and Professional Code § 17203, Plaintiffs and the
19 Class seek an order of this Court that includes, but is not limited to, an order requiring Defendant to
20 (a) provide restitution to Plaintiffs and the other Subclass Members; (b) disgorge all revenues
21 obtained as a result of violations of the UCL; and (c) pay Plaintiffs’ attorneys’ fees and costs.

22 **COUNT II**
23 **Violation of California’s Consumers Legal Remedies Act (“CLRA”),**
24 **California Civil Code § 1750, et seq.**
25 **(On Behalf Of The California Subclass)**

26 73. Plaintiffs reallege and reincorporate by reference all paragraphs alleged above.

27 74. Plaintiffs bring this claim individually and on behalf of the Subclass against
28 Defendant.

1 75. Civil Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have
2 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not
3 have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she
4 does not have.”

5 76. Civil § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a particular
6 standard, quality, or grade, or that goods are of a particular style or model, if they are of another.”

7 77. Civil § 1770(a)(9) prohibits “advertising goods or services with intent not to sell
8 them as advertised.”

9 78. Defendant violated Civil Code § 1770(a)(5), (a)(7), and (a)(9) by holding out the
10 Products as healthy when in fact the Products are not healthy.

11 79. The Products are not healthy because their packaging contain PFAS.

12 80. Defendant failed to disclose that the Products packaging contain PFAS.

13 81. Defendant has exclusive and/or superior knowledge of the health risks of the
14 Products, which was not known to Plaintiffs or Subclass Members.

15 82. Defendant made partial misrepresentations to Plaintiffs and Subclass Members,
16 while suppressing the true nature of the Products. Specifically, by displaying the Products and
17 describing the Products as healthy, including on the product packaging, on its website, and in its
18 marketing, without disclosing that the Products were harmful to animal health. Moreover,
19 Defendant affirmatively misrepresented the Products despite its knowledge that the Products were
20 not as advertised.

21 83. Plaintiffs and the Subclass Members have suffered harm as a result of these
22 violations of the CLRA because they have incurred charges and/or paid monies for the Products
23 that they otherwise would not have incurred or paid and were unknowingly exposed to a significant
24 and substantial health risk.

25 84. On September 27, 2023, prior to the filing of this Complaint, Plaintiffs’ counsel sent
26 Defendant a CLRA notice letter, which complies in all respects with California Civil Code §
27 1782(a). The letter was sent via certified mail, return receipt requested, advising Defendant that it
28 was in violation of the CLRA with respect to the presence of PFAS in the Products, and demanding

1 that it cease and desist from such violations and make full restitution by refunding the monies
2 received therefrom. The letter stated that it was sent on behalf of all other similarly situated
3 purchasers.

4 85. Defendant Purina failed to remedy the issues raised in the notice letter.
5 Accordingly, Plaintiffs seek damages from Defendant for its violations of the CLRA.

6 86. Injunctive relief is also appropriate, and indeed necessary, to require Defendant to
7 provide full and accurate disclosures regarding the Products so that Plaintiffs and Subclass
8 Members can reasonably rely on Defendant's representations as well of those of Defendant's
9 competitors who may then have an incentive to follow Defendant's deceptive practices, further
10 misleading consumers.

11 **COUNT III**
12 **Violation of California's False Advertising Law,**
13 **Cal. Bus. & Prof. Code § 17500, *et seq.***
(On Behalf Of The California Subclass)

14 87. Plaintiffs reallege and reincorporate by reference all paragraphs alleged above.

15 88. Plaintiffs bring this claim individually and on behalf of the Subclass against
16 Defendant.

17 89. Defendant's acts and practices, as described herein, have deceived and/or are likely
18 to continue to deceive Members of the Subclass and the public. As described above, and
19 throughout this Complaint, Defendant misrepresented the Products as healthy when, in fact, the
20 Products were not healthy and instead heighten health risks.

21 90. By its actions, Defendant disseminated uniform advertising regarding the Products
22 to and across California. The advertising was, by its very nature, unfair, deceptive, untrue, and
23 misleading within the meaning of Cal. Bus. & Prof. Code § 17500, *et seq.* Such advertisements
24 were intended to and likely did deceive the consuming public for the reasons detailed herein.

25 91. The above-described false, misleading, and deceptive advertising Defendant
26 disseminated continues to have a likelihood to deceive in that Defendant failed to disclose that the
27 Products contain substances that pose a significant risk to the health and wellbeing of animals, as
28 well as to the environment.

1 92. Defendant continues to misrepresent to consumers that the Products were healthy
2 when in fact the Products are not.

3 93. In making and disseminating these statements, Defendant knew, or should have
4 known, its advertisements were untrue and misleading in violation of California law. Plaintiffs and
5 other Subclass Members based their purchasing decisions on Defendant's omitted material facts.
6 The revenue attributable to the Products sold in those false and misleading advertisements likely
7 amounts to tens of millions of dollars. Plaintiffs and Subclass Members were injured in fact and
8 lost money and property as a result.

9 94. The misrepresentations and non-disclosures by Defendant of the material facts
10 described and detailed herein constitute false and misleading advertising and, therefore, constitute a
11 violation of Cal. Bus. & Prof. Code § 17500, *et seq.*

12 95. As a result of Defendant's wrongful conduct, Plaintiffs and Subclass Members lost
13 money in an amount to be proven at trial. Plaintiffs and Subclass Members are therefore entitled to
14 restitution as appropriate for this cause of action.

15 96. Plaintiffs and Subclass Members seek all monetary and non-monetary relief allowed
16 by law, including restitution of all profits stemming from Defendant's unfair, unlawful, and
17 fraudulent business practices; declaratory relief; reasonable attorneys' fees and costs under
18 California Code of Civil Procedure § 1021.5; injunctive relief; and other appropriate equitable
19 relief.

COUNT IV

Fraud

(On Behalf Of The Class And California Subclass)

21 97. Plaintiffs reallege and reincorporate by reference all paragraphs alleged above.
22

23 98. Plaintiffs bring this claim individually and on behalf of the Class and Subclass
24 under California law.

25 99. At the time Plaintiffs and Members of the Class and Subclass purchased the
26 Products, Defendant did not disclose, but instead concealed and misrepresented, the Products as
27 healthy.
28

1 100. Defendant affirmatively misrepresented the Products, giving the Products the
2 appearance of a product that is indeed healthy.

3 101. Defendant also knew that its omissions and misrepresentations regarding the
4 Products were material, and that a reasonable consumer would rely upon Defendant's
5 representations (and corresponding omissions) in making purchasing decisions.

6 102. Plaintiffs and Members of the Class and Subclass did not know—nor could they
7 have known through reasonable diligence—about the true nature of the Products.

8 103. Plaintiffs and Members of the Class and Subclass would have been reasonable in
9 relying on Defendant's misrepresentations (and corresponding omissions) in making their
10 purchasing decisions.

11 104. Plaintiffs and Members of the Class and Subclass had a right to rely upon
12 Defendant's representations (and corresponding omissions) as Defendant maintained monopolistic
13 control over knowledge of the true quality of the Products.

14 105. Plaintiffs and Members of the Class and Subclass sustained damages as a result of
15 their reliance on Defendant's omissions and misrepresentations, thus causing Plaintiffs and
16 Members of the Class and Subclass to sustain actual losses and damages in a sum to be determined
17 at trial, including punitive damages.

18 **COUNT V**
19 **Fraudulent Concealment or Omission**
20 **(On Behalf Of The Class And California Subclass)**

21 106. Plaintiffs reallege and reincorporate by reference all paragraphs alleged above.

22 107. Plaintiffs bring this claim individually and on behalf of the Class and Subclass
23 under California law.

24 108. At all relevant times, Defendant was engaged in the business of designing,
25 manufacturing, distributing, and selling the Products.

26 109. Defendant, acting through its representatives or agents, delivered the Products to its
27 own distributors and various other distribution channels.

28 110. Defendant willfully, falsely, and knowingly omitted material and made partial
representations facts regarding the quality and character of the Products as discussed throughout.

1 111. Rather than inform consumers of the truth regarding the Products, Defendant
2 misrepresented the quality of the Products as discussed herein at the time of purchase.

3 112. Defendant made these material omissions and partial representations to boost or
4 maintain sales of the Products, and to falsely assure purchasers of the Products that Defendant is a
5 reputable company and that its Products are healthy. The omitted information and partial
6 representations were material to consumers because the representations played a significant role in
7 the value of the Products purchased.

8 113. Plaintiffs and Members of the Class and Subclass accepted the terms of use, which
9 were silent on the true nature of the Products, as discussed throughout. Plaintiffs and Members of
10 the Class and Subclass had no way of knowing that Defendant's representations were misleading.

11 114. Although Defendant had a duty to ensure the accuracy of the information regarding
12 the Products because it was in exclusive knowledge of this information, the information pertains to
13 matters of health, and Defendant did not fulfill that duty.

14 115. Defendant misrepresented material facts partly to pad and protect its profits, as it
15 saw that profits and sales of the Products were essential for its continued growth and to maintain
16 and grow its reputation as a premier manufacturer and seller of the Products. Such benefits came at
17 the expense of Plaintiffs and Members of the Class and Subclass.

18 116. Plaintiffs and Members of the Class and Subclass were unaware of these material
19 misrepresentations, and they would not have acted as they did had they known the truth.
20 Plaintiffs', Class Members', and Subclass Members' actions were justified given Defendant's
21 misrepresentations. Defendant was in the exclusive control of material facts, and such facts were
22 not known to the public.

23 117. Due to Defendant's misrepresentations, Plaintiffs and Members of the Class and
24 Subclass sustained injury due to the purchase of the Products that did not live up to their advertised
25 representations. Plaintiffs and Members of the Class and Subclass are entitled to recover full
26 refunds for the Products they purchased due to Defendant's misrepresentations.

27 118. Defendant's acts were done maliciously, oppressively, deliberately, and with intent
28 to defraud, and in reckless disregard of Plaintiffs', Class Members', and Subclass Members' rights

1 and well-being, and in part to enrich itself at the expense of consumers. Defendant's acts were
2 done to gain commercial advantage over competitors, and to drive consumers away from
3 consideration of competing products. Defendant's conduct warrants an assessment of punitive
4 damages in an amount sufficient to deter such conduct in the future.

5 **COUNT VI**
6 **Unjust Enrichment**
7 **(On Behalf Of The Class And California Subclass)**

8 119. Plaintiffs reallege and reincorporate by reference all paragraphs alleged above.

9 120. Plaintiffs bring this claim individually and on behalf of the Class and Subclass
10 under California law.

11 121. To the extent required by law, this cause of action is alleged in the alternative to
12 legal claims, as permitted under Fed. R. Civ. P. 8.

13 122. Plaintiffs and Members of the Class and Subclass conferred benefits on Defendant
14 by purchasing the Products.

15 123. Defendant was unjustly enriched in retaining the revenues derived from Plaintiffs',
16 Class Members', and Subclass Members' purchases of the Products. Retention of those monies
17 under these circumstances is unjust and inequitable because Defendant failed to disclose that the
18 Products were not healthy as advertised, rendering them unfit for their intended purpose. These
19 omissions caused injuries to Plaintiffs and Members of the Class and Subclass because they would
20 not have purchased the Products if the true facts were known.

21 124. Because Defendant's retention of the non-gratuitous benefits conferred on it by
22 Plaintiffs and Members of the Class and Subclass is unjust and inequitable, Defendant has been
23 unjustly enriched in an amount to be determined at trial.

24 **REQUEST FOR RELIEF**

25 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek
26 judgment against Defendant, as follows:

- 27 (a) For an order certifying the Class and Subclass under Fed. R. Civ. P. 23 and
28 naming Plaintiffs as representatives of the Class and Subclass, and Plaintiffs'
attorneys as Class and Subclass Counsel;

- (b) For an order declaring the Defendant's conduct violates the statutes referenced herein;
- (c) For an order finding in favor of Plaintiffs, the Class, and the Subclass on all counts asserted herein;
- (d) For compensatory, statutory, and punitive damages in amounts to be determined by the Court and/or jury;
- (e) For prejudgment interest on all amounts awarded;
- (f) For an order of restitution and all other forms of equitable monetary relief;
- (g) For injunctive relief as pleaded or as the Court may deem proper;
- (h) For an order awarding Plaintiffs, the Class, and the Subclass their reasonable attorneys' fees and expenses and costs of suit.

JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury on all claims so triable.

Dated: November 17, 2023

BURSOR & FISHER, P.A.

By: /s/ L. Timothy Fisher
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